

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:) CASE NO. 04-53744 JDW
)
BENJAMIN L. MARSHALL)
REBECCA D. MARSHALL)
)
DEBTORS) CHAPTER 13

MOTION TO REOPEN CASE

Benjamin L. Marshall and Rebecca D. Marshall, Debtors in the above referenced case, file this Motion to Reopen Case (“Motion”) pursuant to 11 U.S.C. § 350 and show the Court the following:

1.

This Court has subject matter jurisdiction over this case and contested matter pursuant to 28 U.S.C. § 1334.

2.

The Court has personal jurisdiction over the Debtors via consent.

3.

Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

4.

This contested matter arises out of and relates to the Debtors’ chapter 13 case filed in the United States Bankruptcy Court for the Middle District of Georgia, Macon Division. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O).

5.

The Debtors filed their petition seeking relief under Chapter 13 of the Bankruptcy Code in this Court on August 19, 2004. Camille Hope (“Trustee”) was appointed Trustee in the case.

6.

The plan was confirmed on November 12, 2004, and the confirmed plan provided for full payment of allowed secured and unsecured priority claims and a twenty percent (20%) dividend to non-priority unsecured creditors. The Debtors made their last plan payment to the Trustee on October 7, 2009.

7.

On November 8, 2009, Mr. Marshall was injured at work. His employer was the Sandersville Railroad Company (“Employer”). The Debtors did not amend their schedules to disclose any potential cause of action related to Mr. Marshall’s work-related accident.

8.

The Trustee filed her final report on January 12, 2010. The final report indicates secured and unsecured priority creditors were paid in full. The non-priority unsecured claims totaled \$21,117.49. The Debtors paid \$4,223.50 (20%) of the non-priority unsecured claims, and \$18,016.62 of the non-priority unsecured claims remained unpaid when the case was closed.

9.

The discharge order was entered February 12, 2010, and the case was closed on the same day.

10.

On October 23, 2012, Benjamin L. Marshall filed a civil action against the Employer in the United States District Court for the Middle District of Georgia referenced as Civil Action No. 5:12-cv-00425-MTT (“Civil Action”) pursuant to the Federal Employee Liability Act. The Civil Action is currently pending. The Employer moved for summary judgment on November 14, 2014, and one of the theories is judicial estoppel due to Mr. Marshall’s failure to amend the bankruptcy schedules to disclose the claim arising from the work-related accident.

11.

The Debtors move this court for the entry of an order reopening their case. The reopening of the case will accord relief to the Debtors and may benefit their creditors. The Civil Action is property of the estate. *In re Waldron*, 536 F.3d 1239 (11th Cir. 2008). The Debtors will promptly amend their schedules to disclose and exempt the Civil Action pursuant to O.C.G.A. § 44-13-100(a)(2)(C). The liquidation of the Civil Action may result in the payment of the remaining unpaid claim in the case if the Court determines that the Civil Action is not exempt pursuant to O.C.G.A. § 44-13-100(a)(2)(C) or other applicable law, or the Debtors determine that they wish to pay the remaining unpaid non-priority unsecured claims from exempt property.

Wherefore, the Debtors respectfully request that the Court grant their Motion and enter an order reopening their chapter 13 case and directing the United States Trustee to reappoint Camille Hope as Trustee of the case.

This 18th day of November, 2014.

/s/ Robert M. Matson

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